IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 911 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALABEN MAYANKBHAI SHETH

Versus

STATE OF GUJARAT

Appearance:

MR AMAR D.MITHANI FOR MR PM RAVAL for the Petitioner

MRS HARSHA DEVANI, AGP for Respondents Nos. 1-3

MR KS JHAVERI for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/01/2003

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner herein is a member of one Bankim Cooperative Housing Society, the respondent no.4 herein (hereinafter referred to as 'the Society'). Under Resolution No.4 passed by the General Body of the Society on 27th December, 1987, the petitioner has been expelled from the membership of the Society. The Resolution of expulsion passed by the General Body of the Society has been approved by the District Registrar of Cooperative Societies, the respondent no.3 herein. The challenge to the said Resolution has failed before the State Government in Revision Application preferred before it by the Society. Feeling aggrieved, the petitioner has preferred the present petition.

On 28th September, 1987, the Society had issued notice to the petitioner calling upon her to show cause why, for the reasons recorded therein, she should not be expelled as the member of the Society. The allegations broadly were that the petitioner had, while she was Secretary of the Society, mismanaged the Society. The Society had to initiate action against her and she had resigned as Secretary of the Society. Even after her resignation as Secretary, she continued to act for the Society as if she were the Secretary thereof. The said notice was answered by the petitioner on 14th October, 1987. Since then, under the impugned Resolution passed on 27th December, 1987, the petitioner was expelled from the membership of the Society. The said Resolution was approved by the District Registrar of Cooperative Societies under his order dated 26th March, 1988. Feeling aggrieved, the petitioner preferred Appeal No.55/1988 before the Additional Registrar of Cooperative Societies (Appeals). The said Appeal was allowed on 30th June, 1988. Feeling aggrieved, the Society preferred Revision Application before the State Government, which was allowed on 15th December, 1989.

The authorities below, namely, the District Registrar of Cooperative Societies, Ahmedabad and the State Government have considered the allegations made against the petitioner in details and have come to the conclusion that the petitioner had, while acting as the Secretary of the Society, had inducted her husband as a member of the Society without the authority of law. Even after her resignation as the Secretary, she continued to act on behalf of the Society, thus, interfering with the administration of the Society. She neglected to attend

to her duties so that the Society had suffered monetary loss. The appellate authority had, however, held that in the given circumstances the petitioner could have been removed as Secretary of the Society and there was no need to expel her from the membership of the Society.

Mr.Mithani has contended that Section 36 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act') has wrongly been invoked against the petitioner; that the impugned Resolution has been passed in violation of principle of natural justice in as much as no documents were supplied to the petitioner; that the irregularities referred to in the notice were alleged to have been committed by the petitioner while she was the Secretary of the Society. Such acts of commission and omission committed as Secretary of the Society shall not entail expulsion from the membership of the Society under Section 36 of the Act.

I see no substance in either of the contentions raised by Mr.Mithani. It is not true that the illegalities or irregularities alleged against the petitioner were all committed while she was the Secretary of the Society. On the contrary, the allegation is that even after her resignation as Secretary of the Society, she continued to deal with the administration of the Society so as to cause monetary loss to the Society. In my view, it is Section 36 of the Act alone which authorizes the Society to expel any of its members if the acts of such member are detrimental to the proper working of the Society. Such action can be taken against any member of the Society by passing a resolution by 3/4th majority of all the members present and voting at a General Meeting of the members. Further, the member concerned is required to be given an opportunity of representing his/her case to the General Body and that such resolution is submitted to the Registrar for his approval and is approved by the Registrar. In the present case, all the aforesaid formalities have been duly completed. The petitioner had been given a notice of the intended resolution. She was given an opportunity to represent her case before the General Body. The resolution was passed unanimously by the General Body of the Society and the said resolution has been approved by the District Registrar of Cooperative Societies. As far as the validity of the allegations made against the petitioner are concerned, it should be noted that the two authorities below, namely, the District Registrar of Cooperative Societies and the State Government have found them to have been established. In a petition under

Article 227 of the Constitution of India, this Court has a supervisory jurisdiction over the orders made by the authorities below. In exercise of such supervisory jurisdiction, this Court has no power to substitute the findings recorded by the authorities below. The acts of commission and omission detrimental to the working of the Society have been established against the petitioner. Under the circumstances, the impugned Resolution to expel the petitioner from its membership passed by the Society in its General Meeting can not be interfered with. The said resolution can not be said to have been passed in violation of principle of natural justice as alleged. It is not shown by the petitioner that she had asked for any document and that the petitioner's request was refused. Mr.Mithani has referred to Section 73 of the Act. Section 73 of the Act deals with the final authority of Society. It provides, inter alia, that "the final authority of every society shall vest in the General Body of members in the General Meeting, summoned in such a manner be specified in the Bye-laws." There is nothing on the record to indicate that the impugned Resolution was not passed by the Society in its General Meeting as envisaged under Section 36 of the Act. This contention also requires to be rejected.

No other contention is raised before me. The petition is dismissed with costs. Rule is discharged. Interim relief is vacated.

(Ms. R.M. Doshit, J.)

/sakkaf